

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**PATRICK deMUNECAS; KEVIN McINTYRE;  
CARMEN COSTANZO; JOHAN BOTMA; and  
LANE SPIGNER, on behalf of themselves and all  
others similarly situated,**

**Plaintiffs,**

**09 Civ. 00440 (DAB)**

**-against-**

**BOLD FOOD, LLC; KBFK RESTAURANT  
CORP.; LAURENCE KRETCHMER; and BOBBY  
FLAY,**

**Defendants.**

**NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,  
CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT  
OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL, AND APPROVAL OF  
PLAINTIFFS' PROPOSED NOTICE OF SETTLEMENT AND CLASS ACTION  
SETTLEMENT PROCEDURE**

For the reasons set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of the Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiffs' Counsel as Class Counsel, and Approval of Plaintiffs' Proposed Notice of Settlement and Class Action Settlement Procedure ("Motion for Preliminary Approval") and in the Declaration of Justin M. Swartz in Support of Plaintiffs' Motion for Preliminary Approval ("Swartz Decl."), Plaintiffs respectfully request that the Court enter an Order:

- (1) granting preliminary approval of the Joint Settlement and Release ("Settlement Agreement"), attached as Exhibit B to the Swartz Dec.;
- (2) conditionally certifying the following settlement class under Fed. R. Civ. P. 23(a) and (b)(3) for purposes of effectuating the settlement:

All servers, runners, bussers, and bartenders who work or have worked at Bar Americain, Mesa Grill, and/or Bolo in New York City for 30 days or more between January 15, 2003 and September 23, 2009.

- (3) appointing Outten & Golden LLP as Class Counsel;
- (4) approving Plaintiffs' Proposed Notice of Settlement of Class Action Lawsuit and Fairness Hearing, attached hereto as **Exhibit A**, and directing its distribution;
- (5) approving Plaintiffs' proposed schedule for final settlement approval;
- (6) granting such other, further, or different relief as the Court deems just and proper.

\* \* \*

Plaintiffs have contemporaneously submitted a Proposed Order, attached hereto as **Exhibit B**, for the Court's convenience.

Dated: December 23, 2009  
New York, New York

Respectfully submitted,  
**OUTTEN & GOLDEN LLP**  
By:

/s/ Justin M. Swartz  
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**Attorneys for Plaintiffs and the Putative  
Class**